No. 433

SEP 29 1955

HAROLD B. WILLEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955.

THE STATE OF KANSAS, EX REL LELUS B. BROWN, County Attorney of Harvey County, Kansas, the BOARD OF COUNTY COMMISSIONERS of Harvey County, Kansas; HALSTEAD TOWNSHIP of Harvey County, Kansas; LAKIN TOWNSHIP of Harvey County, Kansas; HALSTEAD COMMON SCHOOL DISTRICT No. 52 of Halstead, Kansas; RURAL HIGH SCHOOL DISTRICT No. 1 of Halstead, Kansas; BENTLEY PUBLIC SCHOOL DISTRICT No. 185, JOINT, of Bentley, Kansas; and VALLEY CENTER TOWNSHIP of Sedgwick County, Kansas,

APPELLANTS,

vs.

CLAY HEDRICK, as County Clerk of Harvey County, Kansas; the STATE COMMISSION OF REVENUE AND TAXATION of the State of Kansas; and the CITY OF WICHITA, KANSAS,

APPELLEES.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS.

JURISDICTIONAL STATEMENT.

KENNETH G. SPEIR,
LELUS B. BROWN,
Both of Newton, Kansas,
Counsel for Appellants.

KANSAS LAW PUB. CO., TOPEKA

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APPELLEES.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS.

JURISDICTIONAL STATEMENT.

INTRODUCTION.

Appellants above-named appeal from the final judgment of the Supreme Court of the State of Kansas, entered on May 7, 1955, (Rehearing denied June 17, 1955),

affirming the judgment of the District Court of Harvey County, Kansas, quashing the Motion for an Alternative Writ of Mandamus theretofore granted and issued, thereby granting tax exempt status to certain property owned by the City of Wichita, Kansas, which is claimed to be taxable by each, and all of the appellants.

Appellants respectfully submit this Jurisdictional Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial Federal questions are presented.

OPINION BELOW.

The opinion of the Supreme Court of Kansas is reported in 178 Kan. 135, 283 Pac. 2d 437. Copy of opinion is hereto attached as Appendix A. The District Court did not file an opinion. There is also attached hereto as Appendix B a copy of the Journal Entry of the District Court of Harvey County, Kansas.

JURISDICTION.

This is an action in mandamus brought under General Statutes of Kansas 1949, Chapter 60, Article 17, (Relating to Mandamus), by the State of Kansas on relation of Lelus B. Brown, County Attorney of Harvey County, Kansas, (pursuant to his obligation and authority under G. S. 1949, 19-702), to compel Clay Hedrick, as County Clerk of Harvey County, Kansas, to assess and levy taxes on certain property located in Harvey County, Kansas, owned by the City of Wichita, the beneficial use of which was alleged to be in the Wichita Water

Company, a private corporation organized for profit. (D. C. Rec. p. 1; S. Ct. Rec. 1d)

The other parties hereto were either granted leave to intervene or made parties defendant by order of the District Court. (D. C. Rec. pp. 17, 19, 28, 29; S. Ct. Rec. 1m, o, t, u)

The judgment of the District Court of Harvey County, Kansas, sustaining the City of Wichita's Motion to Quash the motion for an Alternative Writ of Mandamus, was entered on August 23, 1954; the Supreme Court of Kansas affirmed such judgment on May 7, 1955, and denied Rehearing on June 17, 1955. Notice of Appeal to this court was filed on September 6, 1955, in the District Court of Harvey County, Kansas, and on September 7, 1955, in the Supreme Court of Kansas. (There being doubt by appellants' counsel as to which court is actually "possessed of the record".)

The jurisdiction of the Supreme Court of the United States to review, by appeal, is conferred by Title 28, U.S. Code Section 1257 (2). The following decisions are believed to sustain the jurisdiction of the Supreme Court to review the judgment below on appeal in this case: *Jett Bros. Distilling Co. v. Carrollton,* 262 U.S. 1,6; 40 S. Ct. 255; 64 L. Ed. 421, 423; *Baltimore & Potomac R. Co. v. Hopkins,* 130 U. S. 210, 224; 9 S. Ct. 503; 32 L. Ed. 908; *Miller v. Cornwall R. Co.,* 168 U.S. 131, 133; 18 S. Ct. 34; 42 L. Ed. 409, 410; *Wheeler v. N.Y., N.H. & H.R. Co.,* 178 U.S. 321, 323; 20 S. Ct. 949; 44 L Ed. 1085, 1086, Headnote 1; *Buchanan v. Warley,* 245 U.S. 60, 74; 62 L. Ed. 149; *Ex Parte Virginia,* 100 U.S. 339; 25 L. Ed. 676,

679; *Shelley v. Kraemer*, 334 U.S. 1, 14; 68 S. Ct. 836; 92 L. Ed. 1161, 1181; *Barrows v. Jackson*, 346 U.S. 249, 257; 73 S. Ct. 1031; 97 L. Ed. 1586, 1596; *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282; 42 S. Ct. 106; 66 L. Ed. 239.

In any event, if appeal is not proper, then this should be treated as a Petition for Writ of Certiorari under Title 28 U.S.C. Section 2103. *Charleston Federal Savings & Loan Assn. v. Alderson*, 324 U.S. 182, 187; 65 S. Ct. 624; 89 L. Ed. 857, 862.

Jurisdiction of this Court extends to other errors denying a Federal right. *Flournoy v. Wiener*, 321 U.S. 253, 263; 64 S. Ct. 548; 88 L. Ed. 708, 715.

QUESTIONS PRESENTED.

(1) Is not General Statutes of Kansas, 1949, 79-201, *Seventh*, which provided:

> "That the property described in this section, *to the extent herein limited*, shall be exempt from taxation: . . .
>
> "Seventh. *All* works, machinery and fixtures belonging to and owned by any town, city or village and *used exclusively for conveying water to such town, city or village.*" (Emphasis supplied)

void under the "due process" or "equal protection" clause of the 14th Amendment to the United States Constitution, *when it has been construed* to grant tax exempt status to property, the legal title to which is vested in the City of Wichita, Kansas, but the beneficial use of such property is in the Wichita Water Company, a private corporation organized for profit?

(2) Is not a statute void under the "due process" or "equal protection" clause of the 14th Amendment to the United States Constitution *when it is construed* to grant tax exemption to property beneficially used by private enterprises, where the Kansas Constitution grants tax exemption *only* to "all property used exclusively for . . . municipal . . . purposes . . ."?

(3) Does not either the Kansas Legislature or the Kansas Court violate the "due process" or "equal protection" clause of the 14th Amendment to the United States Constitution when either or both ignore the "uniform and equal" provision of the Kansas Constitution with respect to taxation in enacting or construing a tax exemption statute?

(4) Is not extension of tax exemption beyond the Kansas Constitutional provision, requiring "exclusive use for municipal purposes" for tax exemption, void under the "due process" or "equal protection" clause of the 14th Amendment to the United States Constitution?

(5) Is not the granting of tax exemption to property owned by a city in its "proprietary" capacity, located outside the jurisdiction of the city, but within the jurisdiction of these appellant taxing authorities who derive no benefit from such property, void under the "due process" or "equal protection" clause of the 14th Amendment to the United States Constitution?

STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED.

General Statutes of Kansas 1949, 79-201, *Seventh*, which provides, in so far as material, as follows:

> "That the property described in this section, *to the extent herein limited*, shall be exempt from taxation: . . .
>
> "Seventh. *All* works, machinery and fixtures belonging to and owned by any town, city or village and *used exclusively for conveying water to such town, city or village.*" (Emphasis supplied)

The statute is set forth in full in Appendix C, *infra*, p. 34.

Article XI, Section 1 of the Kansas Constitution which provides, in so far as material, as follows:

> "The legislature shall provide for a *uniform and equal* rate of assessment and taxation, . . . *All property used exclusively for state, county, municipal, literary, education, scientific, religious, benevolent and charitable purposes, . . ., shall be exempted from taxation.*" (Emphasis supplied)

The constitutional provision is set forth in full in Appendix C, *infra*, p. 33.

Section 1 of the 14th Amendment to the Constitution of the United States which provides, in so far as material, as follows:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

Section 1 of the 14th Amendment to the United States Constitution is set forth in full in Appendix C, *infra*, p. 33.

STATEMENT OF THE CASE.

This is an action in mandamus brought in the District Court of Harvey County, Kansas, by the State of Kansas on the relation of Lelus B. Brown, County Attorney of Harvey County, Kansas, against Clay Hedrick, as County Clerk of Harvey County, Kansas, for the purpose of compelling him to assess and tax all property within Harvey County, Kansas, standing in the name of the City of Wichita, Kansas, (Wichita is located in Sedgwick County, Kansas); upon the basis and for the reason that, although Wichita holds legal title thereto, nevertheless the beneficial use thereof was, and is, in the Wichita Water Company, a private corporation organized for profit. (D.C. Rec. 1; S. Ct. Rec. 1d)

The District Court issued an Alternative Writ of Mandamus (D.C. Rec. 14; S. Ct. Rec. 1L) The Answer of Clay Hedrick, as County Clerk, disclosed that the State Commission of Revenue and Taxation of the State of Kansas had previously ruled upon the taxability of a portion of the property in question (D.C. Rec. 18; S. Ct. Rec. 1k) whereupon the State Commission of Revenue and Taxation of the State of Kansas was made a party and answered. (D.C. Rec. 17, S. Ct. Rec. 1m)

Subsequently, upon oral suggestion, the District Court made the City of Wichita, Kansas, the Board of County Commissioners of Harvey County, Kansas, Halstead

Township of Harvey County, Kansas, and Lakin Township of Harvey County, Kansas, parties (D.C. Rec. 19; S. Ct. Rec. 1o) all of whom, with the exception of the City of Wichita, filed Answers praying for the same relief sought by the State of Kansas. (D.C. Rec. 20, 30; S. Ct. Rec. 1o, u)

Thereafter, upon application for leave to intervene (D.C. Rec. 22, 23, 24; S. Ct. Rec. 1g, r) the remaining Appellants were made parties (D.C. Rec. 28, 29; S. Ct. Rec. 1t, u) and filed Answer praying for the same relief sought by the State of Kansas, and expressly relied upon the "equal protection" clause of the 14th Amendment to the United States Constitution. (D.C. Rec. 32, 34; S. Ct. Rec. 1v, x)

The City of Wichita, Kansas, filed its Motion to Quash (D.C. Rec. 26; S. Ct. Rec. 1s) which is equivalent to a Demurrer and admits all the well pleaded allegations of the pleading attacked. (*State ex rel v. Hedrick*, 178 Kan. 135, 139.) (Opinion attached hereto as Appendix A, *infra*, pp. 27-28)

On August 23, 1954, the District Court sustained the City's Motion to Quash the Motion for an Alternative Writ of Mandamus (D.C. Rec. 36; S. Ct. Rec. 1z) (Journal Entry, Appendix B, *infra*, p. 32)

The Appellants, and each of them, appealed the ruling of the District Court to the Supreme Court of Kansas. (D.C. Rec. 38; S. Ct. Rec. 1z) On May 7, 1955, the Supreme Court of Kansas affirmed the District Court. (D. C. Rec. 40; S. Ct. Rec. 5) Motion for Rehearing was

denied on June 17, 1955, (D.C. Rec. 50; S. Ct. Rec. 21) and Notice of Appeal to this Court was filed in the District Court on September 6, 1955, (D.C. Rec. 60), and in the Supreme Court of Kansas (S. Ct. Rec. 23) on September 7, 1955. (Counsel for Appellants were in doubt just which Court was "possessed of the record" as contemplated by Rule 10 (3).)

How the Federal Question is presented: Intervenor Appellants, in their respective Answers, specifically stated:

> "That failure to tax said property in the past, and at this time, has been and is . . . and in violation of the 14th Amendment of the Constitution of the United States by reason of denial to these respective defendants, and their taxpayers of equal protection under the law . . ." (D.C. Rec. 31, 33, 35; S. Ct. Rec. 1v, x, y)

At every stage of the proceedings, Appellants have consistently argued and insisted upon each of the "Questions Presented"; the Supreme Court of Kansas expressly recognized that Appellants' contentions involved Federal Constitutional questions; in their opinion the Court said:

> "Appellants premise their argument by directing attention to . . ., *and to the fourteenth amendment to the constitution of the United States that no state shall deprive any person of property without due process of law nor deny any person within its jurisdiction the equal protection of the law,* . . ." (Appendix A, p. 27). (Emphasis supplied)

and further said:

> "Appellants' contentions are all based on their assumption that beneficial use is in the company, and are presented under three general headings: (1) The property is not exempt by statute; (2) The property is not exempt under the constitution; and (3) The exemption violates constitutional provisions." (Appendix A, p. 28)

The Supreme Court of Kansas having recognized that a Federal question was properly before it, an irrebuttable presumption arises that the Federal question was timely and properly raised. *Charleston Federal Savings & Loan Assn. v. Alderson*, 324 U.S. 182, 185-6; 65 S. Ct. 624; 89 L. Ed. 857, 861.

The Federal questions having been recognized, even though the Supreme Court of Kansas failed to explicitly discuss or decide the Federal questions, the statute was "sustained"; therefore the court necessarily rejected Appellants' contentions that the statute, if construed to grant tax exemption, was void under the 14th Amendment to the Constitution of the United States. *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282; 42 S. Ct. 106; 66 L. Ed. 239; *Supreme Court Practice*, 2d Ed. Stern and Gressman p. 57.

In this case each and all of the Appellants have jurisdiction of the property, or some part thereof, for tax purposes; their tax revenues being directly at stake, each Appellant has a special "property right" in the tax ability of such property.

Furthermore, each Appellant, and particularly the State of Kansas, has standing as *parens patriae,* to maintain this action on behalf of its citizens and taxpayers, each of whom will necessarily have his tax burden increased if tax exemption is sustained, thus each taxpayer will be deprived of his property without due process of law and each will be denied the equal protection of the law by the action of the State, acting through the Legislature and the State Courts.

The finding of fact or conclusion of law by the Supreme Court of Kansas is not binding upon this Court (being merely construction of the pleading and the franchise ordinance, Opinion, Appendix A, *infra,* pp. 27-28). *Norris v. Alabama,* 294 U.S. 587, 590; 55 S. Ct. 579, 79 L. Ed. 1074, 1077.

The undisputed, and indisputable fact is that the Water Company is the *sole* and *only* customer of the City and the City's operations *are vital* to the Water Company. The City provides most, if not all, of the water which the Water Company distributes and sells, *at a profit.* The *only* entity *directly* benefited by the City's water production, transmission and treatment facilities is the Water Company!

Nor is this Court bound by the erroneous statement by the Supreme Court of Kansas that distribution of the water by the City is "in itself a legal function under its *governmental and police power*". (Opinion, Appendix A, *infra,* p. 30)

Such statement cannot be maintained upon either reason or authority. Kansas has always been committed to the standard, and uniform, rule that a city is functioning in a "proprietary" or "private" capacity when it engages in a business enterprise; obviously any operation incident to production and sale of water is proprietary and *not* "governmental" *nor* is it the exercise of "police power" (*McGinley v. City of Cherryvale,* 141 Kan. 155, 158; 40 Pac. 2d 377). This Court has also recognized, and applied, the same rule to operations by a State. *Ohio v. Helvering,* 292 U.S. 360; 54 S. Ct. 725; 78 L. Ed. 1307; *New York v. U.S.,* 326 U.S. 572; 90 L. Ed. 326.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL.

This Appeal presents a question of far-reaching importance and vital concern to every taxing authority in the United States.

The answer to the question, "May a municipally owned business enterprise invade the jurisdiction of other governmental authorities without tax liability?", is of vital concern to every tax-payer. Tax exemption means increased taxes to everyone whose property or business is taxable.

Appellants believe, and respectfully submit, that this Court has jurisdiction to, and should, decide the questions presented. The problem created by the extension of municipally owned business enterprises into the jurisdiction of other governmental agencies is already acute and has every indication of reaching enormous magnitude.

The technical inability of the individual taxpayer to obtain relief from "deprivation of property" by taxation, or exemption, requires suit by governmental authority in its capacity of *parens patriae.*

The real question here presented, than which no question concerning the property rights of the citizen is of more transcendent moment, is: "Whether the Legislature, or the Courts, may grant tax exemption to a business enterprise (though affected by a public interest and partly or wholly owned by a governmental agency) and thus coerce contributions from citizens who have no interest in and receive no benefit from such enterprise?"

It is not a question of "local law" but is one of extreme concern protected by the 14th Amendment to the Constitution of the United States.

Each of the Appellants is vitally concerned with the taxability of the property in question. Each is either wholly, or to a large extent, dependent upon tax revenues in order to carry out its necessary "governmental" functions.

Not only is "the power to tax, the power to destroy" but also "the inability to tax, can result in destruction"! (*New York v. United States,* 326 U. S. 572, 90 L. Ed. 326)

The situation presented in this Appeal has enormous potentiality for the literal destruction of the Appellant School Districts and Townships and serious impairment of the functioning ability of the State and County. Each *ad valorem* taxpayer within the jurisdiction of each of the Appellants has had to "make up the difference" because of the failure to tax the Appellee City's prop-

erty and, to that extent, each of such taxpayers has been and will be "deprived of his property without due process of law".

To permit the City of Wichita, while engaging in a purely "proprietary" enterprise, to invade the jurisdiction of these Appellants, obtain protection and benefits from them, and not be required to contribute taxwise to them, cannot be sustained under the very fundamental concepts of the American form of Government, nor under the 14th Amendment to the Constitution of the United States.

This Court, in the case of *Savings & Loan Assn. v. Topeka*, 20 Wall. (87 U. S.) 655, 663; 22 L. Ed. 455, 461, said:

> "The theory of our governments, state and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers . . .
>
> The power to tax is, therefore, the strongest, the most pervading of all the powers of government, reaching directly or indirectly to all classes of the people. . . . *This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised.*
>
> To lay, with one hand, the power of the government on the property of the citizen, and *with the other to bestow it upon favored individuals to aid private enterprise* and build up private fortunes, *is none the less a robbery* because it is done under the forms of law and is called taxation."

Tax exemption results in an unconstitutional gift of cheaper water to the customers of the Wichita Water Company, at the expense of these Appellants and the taxpayers within the jurisdiction of each.

The Constitution is a solemn and, to every American, a sacred compact between the citizen and his Government; inviolable; and unchangeable, except by specified procedure. Rights guaranteed thereby cannot be denied or taken away by ignoring or evading such provisions.

The only difference between the Constitution of a State and the Constitution of the United States, insofar as the protection afforded thereby is concerned, is that the Constitution of the United States " . . . shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding", and every public official, State or Federal, shall be bound by Oath of Affirmation to support it.

The protections afforded by the Federal Constitution cannot be avoided, by-passed or disregarded by any State, and one of the most important functions of this Court is to apply and enforce the Federal Constitution. *Farrington v. Tennessee,* 5 Otto (95 U. S.) 679, 682; 24 L. Ed. 558.

Neither the Legislature nor the State Courts may either transgress, avoid, ignore or exceed the powers denied or granted by the State Constitution, *and thereby deprive any person of property,* without running afoul of the "due process" clause of the 14th Amendment to the Constitution of the United States; nor can either

of them avoid the "equal protection" clause of such Amendment by any device or subterfuge.

Any legislation designed or interpreted to avoid or defeat State Constitutional limitations or prohibitions is void if the result be "to take property" or to "deny equal protection of the law". Such legislation, either as written or interpreted, is void as being in contravention of the Federal Constitution. *Lawrence v. State Tax Commission,* 286 U.S. 276, 282; 52 S. Ct. 556; 76 L. Ed. 1102.

Action of State Courts is to be regarded as action of the State within the meaning of the Fourteenth Amendment. *Shelley v. Kraemer,* 334 U.S. 1, 14; 92 L. Ed. 1161, 1181.

Section 1 of Article XI of the Kansas Constitution, for the purposes of this case, is but one *fact* which must be considered by this Court in arriving at the decision: "Have Appellants (and their respective taxpayer) been deprived of their property without due process of law or have they been denied the equal protection of the law?"

The Kansas Constitution (Appendix C, *infra,* p. 33) requires "a uniform and equal rate of assessment and taxation" and also expressly specifies just what property shall be exempted from taxation. The history of the Constitutional provision compels recognition, *as a fact which cannot be ignored,* that the provision is a *limitation on the power to exempt from taxation.*

History is replete with the vice *and danger* of unrestricted authority to grant exemption from taxation. This Court in the case of *The Providence Bank v. Billings and*

Pittman, 4 Peters (29 U.S.) 514, 562; 7 L. Ed. 939, 956, speaking through Chief Justice Marshall, said:

> "That the taxing power is of vital importance; that it is essential to the existence of government; are truths which it cannot be necessary to re-affirm. They are acknowledged and asserted by all. It would seem that the relinquishment of such a power is never to be assumed. We will not say that a State may not relinquish it; that a consideration sufficiently valuable to induce a partial release of it may not exist; *but as the whole community is interested in retaining it undiminished, that community has a right to insist* that its abandonment ought not to be presumed in a case in which the deliberate purpose of the state to abandon it does not appear."

The intent to abandon and the limit of abandonment of the taxing power are both *facts* which this Court must pass upon in determining whether either the Kansas Legislature or the Supreme Court of Kansas, or both, violated the rights of Appellants under the 14th Amendment, by granting, or construing the statute to grant, tax exemption to the property sought to be taxed.

Kansas, as other States, has had its financial troubles and the Constitution reflects the experience of the people which teaches one basic principle of Government: "The only safe way to prevent abuse of the power of taxation, is to spell it out in the Constitution."

On two separate occasions the people of Kansas have rejected efforts to modify the "uniform and equal" clause and to remove the limitations on "tax exemption". (See Certificate of the Secretary of State of Kansas in re:

proposed tax amendments to the Constitution, Appendix D, *infra*, p. 36)

Since the rejection of the proposed amendments, *the limitation on the power* of the Kansas Legislature and Courts, *to grant, or extend, tax exemption* beyond the express provisions, *is a fact* and *not a matter of interpretation or construction.*

1. The statute, General Statutes of Kansas 1949, 79-201, *Seventh*, Appendix C, *infra*, p. 34, is clear, precise and exact, it needs no construction, but can, and must be applied to the undisputed, and indisputable fact of the case, viz: the Wichita Water Company and its customers have the exclusive beneficial use of the property in question. The Water Company is the sole and only customer of the City and it, not the City, is the distributor of all water within, and in the vicinity of the City of Wichita.

The Kansas Supreme Court, in this case, reiterated the uniform rule that *"taxation is the rule, exemption is the exception, statutes granting an exemption are strictly construed, and those claiming the exemption have the burden of showing clearly that the facts entitle them to the exemption."* Opinion, Appendix A, *infra*, p. 29.

The admitted facts of this case show conclusively that the property does *not fall* within the scope of the statute, but do show that *all of such property is used exclusively to convey water to the Water Company* and not "to such City".

This Court is not bound by any statement or interpretation of the Kansas Supreme Court as to what the facts are, but is free to make an independent examination of

such facts in deciding whether these Appellants, and the taxpayers each represents, have been deprived of fundamental rights secured by the Federal Constitution. *Norris v. Alabama,* 294 U.S. 587, 590; 55 S. Ct. 579; 79 L. Ed. 1074; *Supreme Court Practice,* 2d Ed. Stern and Gressman, p. 101.

Without question, if the property were owned as well as beneficially used by the Water Company, it would be subject to taxation. The "due process" and "equal protection of the law" clauses of the 14th Amendment require that no taxable property shall be relieved of taxation, *by any device or subterfuge,* at the expense of remaining property and other taxpayers.

Kansas Courts, as well as all other Courts, have and will look "through form to substance" to prevent fraud and abuse of privilege (See *State ex rel v. Miller,* 177 Kan. 324, 336; ... Pac. 2d ...) and must do so if Constitutional guaranties are involved.

Private enterprise being the direct recipient of the benefits derived or derivable from the use of the property in question requires taxation thereof.

2. The "uniform and equal rate of assessment and taxation" provision of the Kansas Constitution, (Appendix C, *infra,* p. 33) *is a material fact* which must be taken into account in considering whether Appellants, and the taxpayers represented by them, have been deprived of substantial rights guaranteed by the 14th Amendment.

As demonstrated above, the people of Kansas have unequivocally stated, by rejection of two proposals to

amend, that the Constitutional provision means just what it says and is not subject to construction nor extension beyond its exact words.

"Uniform and equal" needs no construction nor interpretation; the people of Kansas have foreclosed any construction or interpretation thereof (See Appendix D, *infra,* p. 36); the Legislature is without authority to deviate therefrom or to establish "an equitable system of taxation" or a "just and equitable system of taxation", neither does the Legislature have any authority to "classify the subjects of taxation" except within the limits specified precisely by the Constitution. The only taxing system permitted in Kansas, and *guaranteed by* the 14th Amendment to the Federal Constitution, is one that is "uniform and equal" except that "all property *used exclusively for municipal purposes* shall be exempted from taxation". (See Appendix C, *infra,* p. 33, Art. XI, Sec. 1, Kansas Const.)

Any effort to avoid, evade, or deny the taxation system thereby guaranteed is necessarily void under the 14th Amendment to the Federal Constitution. *Lawrence v. State Tax Commission,* 286 U.S. 276, 282; 52 S. Ct. 556; 76 L. Ed. 1102.

3. Neither the Kansas Legislature nor the Court can grant or extend tax exemption unless the property is used exclusively for municipal purpose. No State, or any of its agencies, is using property for "exclusive public purpose" when it is devoted exclusively to the business enterprise of producing and selling water, or any other

commodity. When a City goes into the business of buying and selling a commodity it takes on the character of a private trader, so far, at least, as the taxing power of other taxing authorities concerned or affected by such business enterprise are concerned. *Ohio v. Helvering,* 292 U.S. 360, 54 S. Ct. 725; 78 L. Ed. 1307; *New York v. United States,* 326 U.S. 572; 90 L. Ed. 326.

In Kansas, as elsewhere, when a City engages in a business enterprise it also assumes the usual burdens of business (*McCormick v. Kansas City,* 127 Kan. 255, 257; 273 Pac. 471; *McGinley v. City of Cherryvale,* 141 Kan. 155, 158; 40 Pac. 2d 377). What burden is more usual to business than taxation?

By the amount of exemption from taxation improperly and wrongfully extended to the City of Wichita (and through it to the Water Company) have the Appellants been deprived of their rightful property—tax revenue therefrom—and by that amount have the taxpayers represented by Appellants been deprived of their property—increased taxation to make up such exemption—all in violation of the "due process" and "equal protection" clauses of the 14th Amendment to the Federal Constitution. *Lawrence v. State Tax Commission,* 286 U.S. 276, 282; 52 S. Ct. 556; 76 L. Ed. 1102, 1106-07.

4. It is clear that arbitrary disregard of the Constitutional limitation on tax exemption by the Supreme Court and the Legislature of Kansas must render the Statute void, otherwise the assumed protection against deprivation of property without due process of law and

the guarantee of "equal protection of the law" afforded by the 14th Amendment is purely an illusion and not one of substance.

The Courts and Legislature are bound to follow the mandate of the people and nothing less than full, fair and real compliance therewith can be permitted to stand.

If this exemption should be sustained, then everyone, or anyone, especially every public utility corporation, could retain (and some have) the use of property and escape taxation thereon by the simple device and subterfuge of placing the legal title in some municipal body. Disaster must necessarily be the only result of such a course: Unholy competition between municipalities to "make a good deal at the expense of others" must necessarily result, with the poor taxpayer being left to "foot the bill".

CONCLUSION.

Appellants respectfully submit that the Federal question presented by this appeal are substantial and are of nation-wide importance.

Respectfully submitted,

KENNETH G. SPEIR,
Suite 4, Hanlin Building,
Newton, Kansas,
Counsel for Appellants.

Of Counsel for Appellants:
LELUS B. BROWN,
County Attorney of Harvey County,
Newton, Kansas.

APPENDIX A.

No. 39,721

STATE OF KANSAS, ex rel., Lelus B. Brown, County Attorney of Harvey County, Kansas, *Appellant*, v. Clay Hedrick, as county clerk of Harvey County, Kansas; The State Commission of Revenue and Taxation of the State of Kansas, and the City of Wichita, Kansas, *Appellees*, and The Board of County Commissioners of Harvey County, Kansas; Halstead Township of Harvey County, Kansas; Lakin Township of Harvey County, Kansas; Halstead Common School District No. 52 of Halstead, Kansas; Rural High School District No. 1 of Halstead, Kansas; Bentley Public School District No. 185, Joint, of Bentley, Kansas; and Valley Center Township of Sedgwick County Kansas, *Appellants*.

SYLLABUS BY THE COURT

1.

The record examined in a proceeding in mandamus filed in the district court to compel the county clerk to assess for taxation certain property situated in his court, and *held*, that the motion for the alternative writ of mandamus and the alternative writ issued disclose that the property, consisting of water pipe lines, pumping equipment and other appurtenances, belongs to and is owned by a city of the first class, is used exclusively for conveying water to such city, and is exempt from taxation under the provisions of G.S. 1949, 79-201, *Seventh*.

2.

The record further examined, and *held*, that the trial court did not err in sustaining the city's motion to quash the plaintiff's motion for the alternative writ of mandamus and the alternative writ issued.

Appeal from Harvey District Court; ALFRED G. SCHROEDER, judge. Opinion filed May 7, 1955. Affirmed.

Kenneth G. Speir, of Newton, argued the cause, and *Lelus B. Brown*, County Attorney of Harvey County, Kansas, was with him on the brief for the appellants the State of Kansas and the Board of County Commissioners of Harvey County, Kansas.

J. Rodney Stone, of Newton, was on the brief for the appellants Halstead and Lakin Townships of Harvey County, Kansas; Halstead Common School District No. 52 and Rural High School District No. 1, of Halstead, Kansas; Bentley Public School District No. 185, Jt., of Bentley, Kansas; and Valley Center Township of Sedgwick County, Kansas.

Arthur N. Turner, of Newton, argued the cause, and *Alden E. Branine*, and *C. Fred Ice*, both of Newton, were with him on the brief for the appellee Clay Hedrick, as County Clerk of Harvey County, Kansas.

DOUGLAS E. SHAY, of Wichita, argued the cause, and *Fred W. Aley*, of Wichita, was with him on the brief for appellee the City of Wichita.

The opinion of the court was delivered by

THIELE, J.: The state on the relation of the county attorney of Harvey county instituted a proceeding in the district court of that county to compel the couny clerk to assess certain property, later mentioned, for taxation, and on the same day an alternative writ was issued. Thereafter the State Commission of Revenue and Taxation, the Board of County Commissioners of Harvey County and the city of Wichita and two townships were made defendants and other municipal corporations who would share in any tax levied, were permitted to intervene. The city of Wichita filed its motion to quash the motion for and the alternative writ of mandamus issued.

The trial court sustained the motion to quash, and the plaintiff, the Board of County Commissioners and the various municipal corporations other than the city of Wichita have appealed.

In view of the questions presented on the appeal, it is not necessary that all of the pleadings be reviewed.

In the motion for the writ filed April 19, 1954, the plaintiff alleged: 1. That Hedrick was the county clerk of Harvey county; 2. "That the City of Wichita, Kansas, has the legal title to certain water pipe lines, pumping equipment, and other appurtenances located in Harvey County, Kansas, but that the beneficial use thereof is in the Wichita Water Company, a private corporation organized for profit. That the City of Wichita, Kansas, purchased and installed said pipe line and other appurtenances located in Harvey County, Kansas, pursuant to a certain agreement with said Wichita Water Company, in connection with a certain franchise, that hereunto attached, marked 'Exhibit A,' is a true and correct copy of Ordinance No. 13-520, which sets forth the agreement or arrangement between said city and said water company."; 3. That under the constitution of the state of Kansas the pipe line and other appurtenances were not exempt from taxation but the defendant had failed to assess them for taxation; 4. That plaintiff had no adequate remedy at law and was entitled to a writ of mandamus directed to the county clerk requiring him to assess the above property for taxation. There was no description of the property other than as shown above.

The copy of the ordinance shows it was enacted November 22, 1942, and granted to The Wichita Water Company, hereafter referred to as the company, a franchise for the purpose of constructing, operating, extending and maintaining a system of waterworks in the city of Wichita for the purpose of supplying and distributing water to the city and the inhabitants thereof for domestic,

commercial, industrial and other uses as well as for the extinguishing of fires, and that the city, during the life of the franchise should deliver to the company at a stated location an adequate supply of water for distribution except under conditions not of present importance and that the company should pay to the city stated rates for the water as well as other fixed charges.

On April 24, 1954, the county clerk filed his answer alleging that the records in his office disclosed that in the year 1941 a described five acres was entered upon the tax rolls as the property of the city of Wichita and was assessed for the years 1941 to 1945 inclusive and on July 6, 1946, the Commission of Revenue and Taxation of the state of Kansas issued an order abating the tax for the reason the property was exempt from taxation and subsequent thereto the property was not again assessed; that he had not placed the property on the assessment rolls for the current year because of the above order and for the further reason the legal title to the property was in the city of Wichita, a city of the firstclass, and, under Art. XI, Sec. 1, of the state constitution and G.S. 1949, 13-1406 and 79-201, the property was exempt from taxation. Other allegations need not be set forth. He prayed the alternative writ be dismissed and he have judgment for costs.

On May 18, 1954, the trial court made its order that the city of Wichita and others be made parties defendant and on June 12, 1954, the city of Wichita filed its motion that the court quash the motion for the alternative writ and the alternative writ issued for reasons which need not be set out in detail but which included that the county clerk was commanded to perform acts beyond the power and scope of his duties, and that no facts were stated showing plaintiff had a clear legal right to require performance of the acts ordered done by the county clerk.

The trial court heard the motion to quash, and after having it under consideration for some time, on August 23, 1954, sustained the motion. In due time the plaintiff, the board of county commissioners and the municipal corporations other than the city of Wichita served notice of appeal.

In this court the appellants have filed a single abstract and a single brief.

Before taking up appellants' contentions of error we note that no defendant has raised any question of the venue of the action insofar as it is concerned. However, as bearing on the question, attention is directed to *Trader v. Southwestern Bell Telephone Co.*, 145 Kan. 600, 66 P. 2d 414, as to venue of actions against a city, and to *Huerter v. Hassig*, 175 Kan. 781, 267 P. 2d 532, as to actions against a state agency.

Appellants premise their argument by directing attention to Art. XI, Section 1, of our state constitution that all property *used exclusively* for municipal purposes shall be exempted from taxation, to G. S. 1949, 79-201, *Seventh*, that all works, machinery and fixtures belonging to any city and *used exclusively* for conveying water to such city shall be exempt from taxation, and to the fourteenth amendment to the constitution of the United States that no state shall deprive any person of property without due process of law nor deny any person within its jurisdiction the equal protection of the law, and by stating the motion to quash is equivalent to a demurrer, citing *Citizens Utilities Co. v. City of Goodland*, 146 Kan. 172, 69 P. 2d 318, and therefore the motion to quash admits all of the allegations of the motion for the writ and the writ, citing *Zinn v. Hill Lumber & Investment Co.*, 176 Kan. 669, 272 P. 2d 1106. Appellants state that the admissions are that title is vested in the city; that the beneficial use is in the company, a private corporation for profit, and the property has not been assessed for taxation, and in another place in their brief,

they state the admission is that the waterworks are used exclusively for the purpose of conveying water to the company. It need not be debated but that a demurrer or other pleading equivalent thereto admits the well pleaded allegations of the pleading attacked for the purpose of determining the sufficiency of the pleading. While a pleading is usually to be liberally construed in favor of the pleader, the whole of it must be considered and where the pleader attaches to his pleading a written instrument on which his allegation rests, he cannot plead at variance with the terms of that instrument or not justified by it (*Wood v. Stewart*, 158 Kan. 729; 150 P. 2d 331). Applying the rule stated, the motion to quash did not admit the pleaded conclusion the beneficial use of the property was in the company and whether that be the case is to be determined from the ordinance and presents a question of law which will be considered later.

Appellants' contentions all are based on their assumption that beneficial use is in the company, and are presented under three general headings: 1. The property is not exempt by statute; 2. The property is not exempt under the constitution; and 3. The exemption violates constitutional provisions.

Preliminary to discussing the appellants' contentions it is noted that the city of Wichita bases its claim for exemption from taxation on two statutes, one pertaining to taxation and providing that all property belonging exclusively to any city shall be exempt from taxation (G.S. 1949, 70-201, *Sixth*), the other pertaining to cities of the first class and providing lands, buildings and other property of such city shall be exempt from taxation (G.S. 1949, 13-1406). Appellants contend that those statutes are unconstitutional in that they do not make the exemption depend upon exclusive use for a public purpose. If, however, the action be disposed of on appellants' contention the property is not exempt under the statute later mentioned and on which they rely, then

the questions of constitutionality of the above mentioned statutes need not be discussed.

Appellants' first contention is that the only statute applicable is G. S. 1949, 79-201, *Seventh*, which provides for exemption from taxation of

> "All works, machinery and fixtures belonging to and owned by any town, city or village, and used exclusively for conveying water to such town, city or village."

and they argue that such statute deals specifically with the tax status of waterworks belonging to a city, and no other statute dealing generally with tax exemption applies, under the rule that where there is a conflict between a statute dealing generally with a subject and another dealing with a specifc phase of it, the specific legislation controls, in support of which they cite *Moody v. Edmondson*, 176 Kan. 116, 269 P. 2d 462. They expand their argument by citing a number of our decisions holding that taxation is the rule, exemption is the exception, and that statutes granting an exemption are strictly construed and those claiming the exemption have the burden of showing clearly that the facts entitle them to the exemption. Those rules were recently restated and adhered to in *Runbeck v. Peterson*, 177 Kan. 314, 279 P. 2d 233, and the cases cited by appellants need not be reviewed.

In support of its contention that the statutes relied upon by it control, the city of Wichita cites *City of Harper v. Fink*, 148 Kan. 278, 80 P. 2d 1080, where application of G. S. 1949, 79-201, *Sixth*, and a counter part of G. S. 1949, 13-1406 being G. S. 1949, 14-1101, were involved and where it was held that under those statutes the test whether real estate belonging to a city was exempt from taxation was ownership and not use. That case, however, did not involve a situation where G. S. 1949, 79-201, *Seventh*, presently relied on by appellants, had application, and that case is not decisive of

appellants' contention that the last mentioned statute controls.

In view of what is later said we need not enter into any discussion of the rule of construction as to general or special legislation. The appellants make no direct contention that the ordinance of the city of Wichita granting a water distributing franchise to the company is illegal or invalid, and when capacity of the present plaintiff to raise the question and the power of the Harvey County district court to decide it even though the water company was a party, and it is not, are considered, it is apparent such indirect contention as is made cannot be ruled on.

It is apparent from the ordinance granting the franchise to the company that the city obligates itself to furnish water at a designated place in Sedgwick County and that the company obligates itself to distribute the water to the city and its inhabitants for domestic, commercial and other uses as well as for the extinguishing of fires. There is nothing in the ordinance indicating from what source the city is to obtain water or that the company has any obligation to or any interest in or right to control any property of the city between the point of delivery of water to it and the place where the city of Wichita may obtain the water. It may not be said that the company has any beneficial interest in the works of the city beyond the point where the water is delivered to the company. For present purposes, we are of the opinion it is of no concern to the appellants how the city distributes the water which it obtains for its uses or whether it may do the same by its own distribution system, if it had or has one, or by contract with someone like the company, for the end result is to supply the city and its inhabitants with water, in itself a legal function under its governmental and police power.

By way of summary we conclude that the motion for the writ and the ordinance attached as a part thereof disclose that The Wichita Water Company had no beneficial interest in the property of the city of Wichita located in Harvey county; that the property, works, machinery and fixtures belonging to the city for conveying water to such city, were used exclusively for that purpose; that under G. S. 1949, 79-201, *Seventh*, such property was exempt from taxation and that the trial court did not err in rendering judgment quashing the motion for the alternative writ of mandamus to compel the county clerk of Harvey county to assess the property for taxation and the alternative writ issued.

The judgment of the trial court is affirmed.

APPENDIX B.

Judgment of the District Court of Harvey County, Kansas:

JOURNAL ENTRY.

Now on this 15th day of July, 1954, comes on for hearing the motion of the defendant City of Wichita to quash the motion for alternative writ and the alternative writ filed and issued herein. The plaintiff is present by its attorneys, Kenneth G. Speir and Lelus B. Brown. The defendant Clay Hedrick is present by his attorney Arthur Turner. The defendant Board of County Commissioners of Harvey County, Kansas, is present by its attorneys, Lelus B. Brown and Kenneth G. Speir. The defendant City of Wichita is present by its attorney, Douglas E. Shay. All the rest of the defendants except the State Commission of Revenue and Taxation of the State of Kansas are present by their attorney, J. Rodney Stone. The Court, after the arguments of counsel, takes the matter under advisement and thereafter requests the submission of briefs. And now, on this 23rd day of August, 1954, being fully advised in the premises, the Court, finds that the Motion to Quash should be sustained.

IT IS THEREFORE BY THE COURT ORDERED that the Motion to Quash the motion for alternative writ and the alternative writ be and the same is hereby sustained.

IT IS FURTHER BY THE COURT ORDERED that the costs be taxed to the plaintiff.

NOTE: The only judgment of the Supreme Court of Kansas is contained in the opinion, Appendix A, *supra*, page 23.

APPENDIX C.

U. S. CONSTITUTION.

Amendment 14—RIGHTS AND IMMUNITIES OF CITIZENS

Note: Proclamation declaring fourteenth amendment ratified dated July 28, 1868. (Kansas ratified previous to date of said proclamation.)

Section 1. *Citizenship; privileges or immunities; due process clause.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

KANSAS CONSTITUTION.

Article 11.—FINANCE AND TAXATION

§1. *System of taxation; classification; exemption.* The legislature shall provide for a uniform and equal rate of assessment and taxation, except that mineral products, money, mortgages, notes and other evidence of debt may be classified and taxed uniformly as to class as the legislature shall provide. All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, and personal property to the amount of at least two hundred dollars for each family, shall be exempted from taxation.

Note: The words "except that mineral products, money, mortgages, notes and other evidence of debt may be classified and taxed uniformly as to class as the legislature shall provide," constitute an amendment submitted by the legislature in 1923 (L. 1923, ch. 255) and adopted at the general election November 4, 1924.

GENERAL STATUTES OF KANSAS
1949, 79-201, page 2535.

79-201. Property exempt. That the property described in this section, to the extent herein limited, shall be exempt from taxation: *First.* All buildings used exclusively as places of public worship, as public schoolhouses, or both, with the furniture and books therein contained and used exclusively for the accommodation of schools and religious meetings, together with the grounds owned thereby, not exceeding in any one case ten acres, if not leased or otherwise used with a view to profit; and also any parsonage or dwelling owned by any church society, whether said society be a local or a district or the general organization of such church, and occupied as a residence by a pastor of such local church society, or a regularly ordained minister of such district or general church society, and which pastor or minister is regularly engaged in conducting the services and in the ministrations of such church society in the churches thereof throughout such local district or general church area, within the state of Kansas, together with the ground on which it is situated, not exceeding in any one case one-half acre; and all that portion of any building and the ground upon which such building stands, belonging to any literary, educational, scientific, religious, benevolent or charitable corporation, organization or society, situated under any lodge, audience or assembly room used by such corporation, organization or society, or the ante-chambers, halls, passages or other compartments designed for and used as appurtenances of such lodge, audience or assembly room, as well as said rooms and appurtenances, shall be wholly exempt from taxation when the portion of said building so situated is leased or rented for legitimate purposes, and the net rents or earnings thereof are applied exclusively to literary, educational, scientific, religious, benevolent or charitable purposes. *Second.* All lands used exclusively as graveyards. *Third.* All buildings and parts of buildings belonging to scientific, liter-

ary and benevolent associations, used exclusively for scientific, literary or benevolent purposes, together with lands, not exceeding five acres, owned and occupied by such institutions and attached thereto, if not leased or otherwise used with a view to profit; and all books, papers, furniture, apparatus and instruments belonging to such associations, and used exclusively for scientific, literary and benevolent purposes. *Fourth.* All moneys and credits belonging exclusively to universities, colleges, academies or other public schools of any kind, or to religious, literary, scientific or benevolent and charitable institutions or associations, appropriated solely to sustain such institutions or associations, not exceeding in amount or in income arising therefrom the limit prescribed by the charter of such institution or association. *Fifth.* All property belonging exclusively to this state or to the United States. *Sixth.* All property belonging exclusively to any county, city, town or school district, except lands bid off for counties or cities at tax sales. *Seventh.* All works, machinery and fixtures belonging to and owned by any town, city or village, and used exclusively for conveying water to such town, city or village. *Eighth.* All fire engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safekeeping thereof, and for the meeting of fire companies, whether belonging to any town, city or village, or to any fire company organized therein. *Ninth.* Personal property to the amount of two hundred dollars for each family: *Provided,* That when a family has once become entitled to this exemption, the right thereto shall exist so long as any member of the original family survives and maintains a home. *Tenth.* The wearing apparel of every person. *Eleventh.* All public libraries. *Twelfth.* Family liabraries and schoolbooks of every person and family not exceeding in value in any one case of fifty dollars. *Thirteenth.* The reserve or emergency funds of fraternal beneficiary societies authorized to do business under the laws of the state of Kansas.

APPENDIX D.

OFFICE OF SECRETARY OF STATE

TOPEKA, KANSAS

PAUL R. SHANAHAN
SECRETARY OF STATE

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I, PAUL R. SHANAHAN, Secretary of State of the State of Kansas, do hereby certify that the official files and records in the office of the Secretary of State of the State of Kansas show that the Kansas legislature, meeting during the regular Session of 1913, adopted Senate Concurrent Resolution No. 4, said resolution being published in the Kansas Session Laws of 1913 as Chapter 335, Laws of Kansas, 1913, with the context of the resolution appearing as follows:

A PROPOSITION to amend sections 1 and 2 of article 11 of the constitution of the state of Kansas, relative to finance and taxation.

Be it Resolved by the Legislature of the State of Kansas, two-thirds of the members elected to each House thereof concurring therein.

SECTION 1. The following proposition to amend the constitution of the state of Kansas is hereby submitted to the qualified electors of the state for their approval or rejection: That sections 1 and 2, article 11, be amended to read as follows:

Section 1. *The legislature shall have power to establish and maintain an equitable system for raising state and local revenue,* and may classify the subjects of taxation so far as their differences justify the same, in order to secure a just return from each. All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, and personal

property to the amount of at least two hundred dollars for each family, shall be exempted from taxation. Taxes may also be imposed on incomes, franchises, privileges and occupations, which taxes may be graduated and progressive, *and reasonable exemption may be provided.*

SEC. 2. This proposition shall be submitted to the electors of the state at the general election in the year 1914 for their approval or rejection. The amendment hereby proposed shall be designated on the ballot by the following title: "The tax amendment to the constitution," and shall be voted for or against as provided by law under such title.

SEC. 3. This resolution shall take effect and be in force from and after its publication in the statute book.

Approved March 10, 1913.

I further certify that the official files and records in the office of the Secretary of State of the State of Kansas show that the Kansas legislature, meeting during the regular session of 1919, adopted House Concurrent Resolution No. 37, said resolution being published in the Kansas Session Laws of 1919 as Chapter 335, Laws of Kansas, 1919, with the context of the resolution appearing as follows:

A PROPOSITION to amend sections 1 and 2 of article 11 of the constitution of the state of Kansas relative to finance and taxation.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected to each House thereof concurring therein:

SECTION 1. The following proposition to amend the constitution of the state of Kansas is hereby submitted to the qualified electors of the state for their approval or rejection: That sections 1 and 2, article 11, be amended in one section to read as fol-

lows: "Section 1. *The legislature shall have power to establish and maintain a just and equitable system for raising state and local revenue,* and may classify the subjects of taxation in order to secure a just return therefrom *and may exempt property when the public welfare will be benefited thereby;* but, all property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, and personal property to the amount of at least two hundred dollars for each family, shall be exempted from taxation."

SEC. 2. This proposition shall be submitted to the electors of the state at the general election in the year 1920 for their approval or rejection. The amendment hereby proposed shall be designated on the ballot by the following title: "The tax amendment to the constitution," and shall be voted for or against as provided by law under such title.

SEC. 3. This resolution shall take effect and be in force from and after its publication in the statute book.

Approved March 11, 1919.

I further certify that the records show that the proposition set forth in Chapter 335, Laws of Kansas, 1913, was considered and voted upon at the General Election of 1914 *with the election results showing the proposition to be rejected* by the following vote: For—156,969. Against—166,800.

I further certify that the records show that the proposition set forth in Chapter 335, Laws of Kansas, 1919, was considered and voted upon at the General Election of 1920 with *the election results showing the proposition to be rejected* by the following vote: For—170,710. Against—218,931.

IN TESTIMONY WHEREOF:
I hereto set my hand and cause to be affixed my official seal. Done at the City of Topeka, this seventh day of September, A. D. 1955.

(SEAL)

/s/ Paul R. Shanahan
PAUL R. SHANAHAN,
SECRETARY OF STATE.

(EMPHASIS SUPPLIED by Appellants)